

FILE COPY

Office - Supreme Court, U. S.

FILED

JUN 6 1939

CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 87

BOB WHITE,

Petitioner,

vs.

THE STATE OF TEXAS.

PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF CRIMINAL APPEALS OF THE STATE
OF TEXAS.

J. P. ROGERS,

S. F. HILL,

Counsel for Petitioner.

✓
CARTER WESLEY,

Of Counsel.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 87

BOB WHITE,

Petitioner,

vs.

THE STATE OF TEXAS.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Supreme Court of the United States of America:

Bob White, plaintiff in error, in the above styled and numbered cause, shows by this petition to this Honorable Court that in the records, proceedings, and decisions herein, the same being the highest Court in the State of Texas in which a decision could be had in this case (the same being a criminal case in which the said Bob White was indicted in the District Court of Polk County, Texas, and by change of venue the same was tried in Montgomery County, Texas) for the offense of rape, was tried in said Montgomery County and a conviction resulted in which he was given the extreme penalty of death therefor.

The case was appealed to the Court of Criminal Appeals and was affirmed by said Court on February 15, 1939, and a motion for rehearing was, by said court, overruled on May 17, 1939.

That manifest error occurred in both the Trial Court and the Court of Criminal Appeals to the great damage of the said Bob White, in that:

1.

The court erred in not sustaining plaintiff in error's motion to quash the indictment in this cause in the District Court of Polk County, Texas, for the reason that all negroes were excluded from such Grand Jury because they were negroes.

2.

The court erred in overruling plaintiff in error's motion to quash the Special Venire before which he was tried in Montgomery County on change of venue because all negroes were excluded from the Special Venire which tried him therein, because they were negroes.

3.

Plaintiff in error would respectfully submit to this Honorable Court that in support of both the above reasons it was shown that no persons of the African race or negroes were on the Grand Jury which indicted him for this offense and none on the Special Venire which tried the same, and he being a negro has been discriminated against because thereof, and the undisputed evidence on the motion for new trial discloses the same to be the fact and that there had been no negroes drawn and none served on the Grand Jury in Polk County where the indictment was returned against him and had not been for many years last past, it having been shown by the Jury Commission who selected the Grand

Jury that there were many negro taxpayers in Polk County, but that none of them had been drawn on said Grand Jury, because they were negroes.

4.

Plaintiff in error would further show to this Honorable Court in support of this motion that it was shown that there were no negroes of the African race, of which he is a member, on the Special Venire, which tried him, and for such reason he has been discriminated against because of his race and color and the undisputed evidence in the motion for a new trial discloses such to be the fact, that is to say, that no negroes were drawn and none served on such Special Venire in Montgomery County, for many years, where the charge against this plaintiff in error was tried. That said discrimination was in violation of the Fourteenth (14) Amendment to the Constitution of the United States, which guarantees equal protection under the law to the white race and the negro race alike and a denial to him of such rights guaranteed under the Constitution of the United States would show to this Honorable Court that he has not had a fair and impartial trial and that he has been denied a legal and constitutional right guaranteed him by the Constitution of the United States. That it was shown by the evidence at the motion for a new trial in Montgomery County, Texas, that the plaintiff in error was discriminated against by reason of the fact that he is a member of the negro race and that, therefore, a constitutional right, guaranteed him by the Constitution of the United States, has been denied him.

WHEREFORE, plaintiff in error prays that a writ of certiorari be allowed and that a transcript of the records, proceedings, and papers upon which said decree was rendered, opinion based, and motion for rehearing was overruled, duly authenticated, be ordered sent to the Supreme Court

of the United States of America at Washington, D. C., so that the rules of such Court in such case made and provided in order that the same may be by such Honorable Court inspected and corrected in accordance with law and justice.

J. P. ROGERS.
S. F. HILL.

CARTER WESLEY,
Of Counsel.

Assignments of Error.

Now comes Bob White, plaintiff in error, above named, and files the following assignments of error upon which he will rely, upon his prosecution of the appeal in the above entitled cause from the decree of the Court affirming the same on February 15, 1939, and the further decree in denying his motion for rehearing made May 17, 1939.

1.

The Court of Criminal Appeals of the State of Texas erred in overruling plaintiff in error's motion to quash the indictment, returned against him in this cause by the Grand Jury of Polk County, Texas, for the reason that all negroes and members of the African race were excluded from such Grand Jury because of the fact that they were negroes and members of the African race.

2.

The Court erred in overruling his motion to quash the Special Venire, before which he was tried in Montgomery County, Texas, on a change of venue from Polk County, Texas, because all negroes were excluded from the Special Venire which tried him on such indictment, because of the fact that they were negroes.

WHEREFORE, plaintiff in error prays that the judgment and sentence of the Court of Criminal Appeals of the State of Texas be reversed and that it be ordered to enter a decree reversing the decision of the lower court in this cause.

J. P. ROGERS.
S. F. HILL.

CARTER WESLEY,
Of Counsel.

.(7618) .